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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91191056
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF APPLICATION

Mark: PINNACLES RANCHES
Applicant: Franciscan Vineyards, Inc.
Serial No.: 77/598,674
Published in
the **Official Gazette**: March 17, 2009

WHITE ROCK DISTILLERIES, INC.)	
)	
Opposer,)	
)	
v.)	Opposition No. 91191056
)	
FRANCISCAN VINEYARDS, INC.,)	
)	
Applicant.)	
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MAIN TRIAL BRIEF FOR OPPOSER, WHITE ROCK DISTILLERIES, INC.

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I. PRELIMINARY STATEMENT OF THE ISSUES

The issues in this case are simple and straight forward – whether the term “Pinnacles Ranches” as used by Applicant Franciscan Vineyards, Inc. (“Applicant”): (1) is primarily geographically descriptive; and (2) functions as a trademark. Applicant has attempted to obscure the inescapable reality of the facts by clogging the record with reams of facially irrelevant documents. However, the uncontroverted evidence of record – even from the testimony of several of Applicant’s current and former employees – clearly establishes that the term “Pinnacles Ranches” identifies the physical locations of Applicant’s winery and vineyards, and further that Applicant consistently provides this factual information to the public and the trade, thus creating an inevitable goods/place association. Accordingly, the term “Pinnacles Ranches” is primarily geographically descriptive within the meaning of 15 U.S.C. § 1052(e)(2) for wine.

Further, the record is devoid of any evidence showing that the term “Pinnacles Ranches” as used by Applicant is perceived as identifying a single source of the goods. Accordingly, Applicant’s purported mark should be denied registration pursuant to Sections 1, 2, and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052 and 1127, on the grounds that the term “Pinnacles Ranches” fails to function as a trademark.

Opposer White Rock Distilleries, Inc. (“Opposer” or “White Rock”) has standing in the instant proceeding because Applicant has asserted and relied upon a claim in its Amended Notice of Opposition in Opposition No. 91185984 (in which Applicant is opposing White Rock’s Application Serial No. 78/166,136 for the mark PINNACLE for vodka) that Applicant owns superior common law rights in the term “Pinnacles Ranches” for wine.

II. DESCRIPTION OF THE RECORD

A. Opposer’s Evidence

White Rock ’s record in this case consists of the following:

- 1) White Rock's Notices of Reliance:
 - i. Notice of Reliance on Applicant's Responses to Interrogatories Nos. 5 and 7 and Request for Admission Nos. 1 and 2 (hereinafter "Applicant's Rog Response" and "Applicant's RFA Response" respectively) (Docket Entry #21);
 - ii. Notice of Reliance on Portions of Testimony Deposition of Third-Party Witness Riccardo Mora, consisting of testimony deposition of third-party witness Riccardo Mora (a former employee of Applicant) and corresponding exhibits (hereinafter "Mora Dep." and "Mora Dep. Ex.") (Docket Entry #22)¹;
 - iii. Notice of Reliance on Portions of Testimony Deposition of Third-Party Witness Christine Lilienthal, consisting of excerpts of testimony deposition of third-party witness Christine Lilienthal (a former employee of Applicant) and corresponding exhibits (hereinafter "Lilienthal Dep." and "Lilienthal Dep. Ex.") (Docket Entry #23);
 - iv. Notice of Reliance on Printed Publications comprising of printouts from third party websites of maps, articles and other documents supporting White Rock's contention that the term "Pinnacles Ranches" is primarily geographically descriptive and fails to function as a mark (hereinafter "White Rock NOR Pr. Pub.") (Docket Entry #24);

¹ On November 29, 2010, the parties filed a Stipulated Motion to Extend and Reset Trial Dates And Motion Requesting Board Approval of Stipulations Governing Testimony Depositions (hereinafter "Stipulated Motion"); See Docket Entry #18. The Stipulated Motion, which the Board approved on December 2, 2010 included the following evidentiary stipulations: (1) The testimony deposition transcript for White Rock's expert witness Paul Reidl may be offered into evidence by White Rock for the instant proceeding as well as Opposition No. 91185984; and (2) Relevant portions of the testimony deposition transcripts of third-party witnesses Riccardo Mora and Christine Lilienthal may be offered into evidence by both Opposer and Applicant in the instant proceeding and Opposition No. 91185984; and (3) Testimony deposition transcripts for Applicant's witnesses Oren Lewin and Scott Black may be offered into evidence by Applicant in the instant proceeding and Opposition No. 91185984; and (4) Each party would use reasonable efforts to submit/designate only those portions of the testimony deposition transcripts in each case that are relevant to the issues in that case.

- v. Rebuttal Notice of Reliance on Official Records comprising of (1) Title 27 of the Code of Federal Regulations (C.F.R.) part 4, Labeling and Advertising of Wine, namely, 27 C.F.R. § 4.33 subparts (a) and (b), and 27 C.F.R. § 4.39 subparts (a), (i) and (m); and (2) Use of Various Winemaking Terms on Wine Labels and in Advertisements; Request for Public Comment, Proposed Rules, 75 Fed. Reg. 67666-67669 (November 3, 2010) (to be codified in 27 C.F.R. pt.4), all of which were accessed and printed from the publicly available web site for the U.S. Government Printing Office (GPO), which can be found at <http://www.gpo.gov>, serving to clarify and explain certain portions of the testimony of Applicant's witness Deborah Price (hereinafter "White Rock Rebuttal NOR Pr. Pub. No. 1") (Docket Entry #56); and
 - vi. Rebuttal Notice of Reliance on Printed Publications comprising of printouts from Applicant's parent company, Constellation Wine U.S.'s web site at <http://cwinesus.com>, serving to rebut, clarify and/or explain certain portions of the testimony of Applicant's witness Jon E. Guggino (hereinafter "White Rock Rebuttal NOR Pr. Pub. No. 2") (Docket Entry #57).
- 2) Certified Testimony Deposition Transcript of White Rock's expert witness Paul W. Reidl, taken January 26, 2011, along with accompanying exhibits and errata sheet (hereinafter "Reidl Dep." and "Reidl Dep. Ex.") (Docket Entry #25-34).
 - 3) Rule 26 Disclosure Statement and Declaration of Paul W. Reidl and exhibits thereto, dated July 31, 2010 and served on Applicant on August 4, 2010 (hereinafter "Reidl Dec." and "Reidl Dec. Ex.") (Docket Entry #15).

B. Applicant's Evidence

Applicant's record in this case consists of the following:

- 1) Excerpts of testimony deposition of third-party witness Christine Lilienthal (a former employee of Applicant) and corresponding exhibits (Docket Entry # 43, 46-48).
- 2) Excerpts of testimony deposition of third-party witness Riccardo Mora (a former employee of Applicant) and corresponding exhibits (Docket Entry # 51).
- 3) Applicant's Notices of Reliance:
 - i. Applicant's First Notice of Reliance Pursuant to 37 C.F.R. § 2.122(d)(2) comprising of a copy of the registration certificate for Reg. No. 997,378 showing current title and status (Docket Entry # 37);
 - ii. Applicant's Corrected First Notice of Reliance Pursuant to 37 C.F.R. § 2.122(d)(2) comprising of a copy of the registration certificate for Reg. No. 997,378 showing current title and status (Docket Entry # 38);
 - iii. Applicant's First Notice of Reliance Pursuant to 37 CFR § 2.122(e) consisting of official records of the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Dept. of Treasury ("TTB"), namely, copies of various label approvals owned by E. & J. Gallo downloaded from the online public COLA registry and officials records of the U.S. Patent and Trademark Office ("USPTO") identifying various U.S. trademark registrations owned by E. & J. Gallo (Docket Entry # 41);
 - iv. Applicant's Notice of Reliance Pursuant to 37 C.F.R. § 2.122(e) consisting of copies of label approvals and related documents from the TTB on-line search database (Docket Entry # 49);
 - v. Applicant's Notice of Reliance Pursuant to 37 C.F.R. § 2.122(e) consisting of a certified copy of the file wrapper for Reg. No. 997,378 for the mark PINNACLES (Docket Entry # 50); and
 - vi. Applicant's Notice of Reliance Pursuant to 37 C.F.R. § 2.122(e) comprising a printed publication, namely, a printout from <http://www.pilotoutlook.com/airport/california/c156> (Docket Entry # 53).

- 4) Testimony deposition transcripts and corresponding exhibits for the following individuals: (i) Geoffrey Scott Black, marketing manager at Constellation Wines U.S. (“CWUS”), taken on January 6, 2011 (Docket Entry # 52) (hereinafter “Black Dep.” and “Black Dep. Ex.”); (ii) Deborah A. Price, vice president of regulatory affairs at CWUS, taken on March 2, 2011 (Docket Entry # 54) (hereinafter “Price Dep.” and “Price Dep. Ex.”); and (iii) Jon E. Guggino, vice president of marketing for Constellation Specialty Wines and Spirits, taken on March 2, 2011 (Docket Entry # 55) (hereinafter “Guggino Dep.” and “Guggino Dep. Ex.”).
- 5) Testimony of submitted in the form of a declaration and corresponding exhibits for the following individuals: (i) Robert A. Rannells (Docket Entry # 42); and (ii) Daniel Comunale (Docket Entry # 44-45).²

III. STATEMENT OF FACTS

The application herein opposed was filed on October 23, 2008. The record of the application indicates that, after telephone contact from the responsible Examining Attorney, Applicant agreed to disclaim exclusive rights in the term RANCHES apart from the mark as shown.

Applicant filed its application to register “Pinnacles Ranches” just a few weeks after commencing Opposition No. 91185984, in which Applicant is opposing White Rock ’s application to register the mark PINNACLE for wine on Section 2(d) basis. Upon publication of the PINNACLES RANCHES application, White Rock filed the instant proceeding. Applicant has claimed use of the mark PINNACLES RANCHES since at least as early as May 2004, but the record in this case contains virtually no evidence concerning Applicant’s adoption or

² The parties stipulated (pursuant to Trademark Rule 2.123(b), 37 C.F.R. §2.123(b)), to Applicant’s submission testimony and exhibits of these two witnesses in the form of sworn declarations.

development of, nor any business activities relating specifically to a “Pinnacles Ranches” trademark.

IV. ARGUMENT

A. **The Term “Pinnacles Ranches” is Primarily Geographically Descriptive**

The Board has interpreted 15 U.S.C. § 1052 (e)(2) to mean that a term is primarily geographically descriptive and thus unregistrable if: (1) the primary significance of the proposed mark is that of the name of a place generally known to the public; and (2) that the public would make a goods/place or services/place association, *i.e.*, would believe that the relevant goods or services originate from the geographic location identified by the term proposed to be registered. *In re JT Tobacconists*, 59 U.S.P.Q.2d 1080, 1081-82 (T.T.A.B. 2001) (citing *Univ. Book Store v. Univ. of Wis. Bd. of Regents*, 33 U.S.P.Q.2d 1385, 1402 (T.T.A.B. 1994)); *In re Cal. Pizza Kitchen Inc.*, 10 U.S.P.Q.2d 1704, 1705 (T.T.A.B. 1988); *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 3 U.S.P.Q.2d 1450, 1452 (Fed. Cir. 1987).

Moreover, where the geographical significance of a term is its primary significance and the geographical place named by the term is neither obscure or remote, a goods/place association may ordinarily be presumed from the fact that the applicant’s goods or services come from the geographical place named in the mark. *See e.g.*, *In re JT Tobacconists*, 59 U.S.P.Q. at 1082; *In re Cal. Pizza Kitchen Inc.*, 10 U.S.P.Q.2d at 1705; *In re Handler Fenton Westerns, Inc.*, 214 U.S.P.Q. 848, 850 (T.T.A.B. 1982). Here, White Rock submits that each of the conditions set forth above have been met such that the term “Pinnacles Ranches” is primarily geographically descriptive for wine and fails to function as a trademark.

(1) **The Primary Significance of the Term “Pinnacles Ranches” Is Geographic**

The evidence in this case establishes conclusively that “Pinnacles Ranches” refers to a specific geographic area where the grapes for Applicant’s ESTANCIA-branded chardonnay and pinot noir varietals are grown and made into wine.

“Pinnacles” is the name of a portion of the Gabilan Mountains in Central California defined by the monoliths, spires, and crags remaining from an ancient volcano. *See Reidl Dec.* at 6:6-8. In 1908, the Pinnacles rock formations was designated (around the same time as the Grand Canyon) as among the first National Monuments in the United States, and is administered by the United States Park Service. *See Reidl Dec.* at 6:17-18; *see also, e.g.*, White Rock NOR Pr. Pub. at 78, 83-94, 101, 104, 109-112³ (documents marked WRDOpp20059; 20064-75; 20083; 20086; 20092-95). The Pinnacles National Monument attracts approximately 200,000 visitors annually for its unique geologic formations, trails for hiking, opportunities to explore caves, rock climbing, camping, and wildlife viewing. *See Reidl Dec.* at 6:20-23, 7:6; *see also, e.g.*, White Rock NOR Pr. Pub. at 109-112, 117 (documents marked WRDOpp20092-95; 20100).

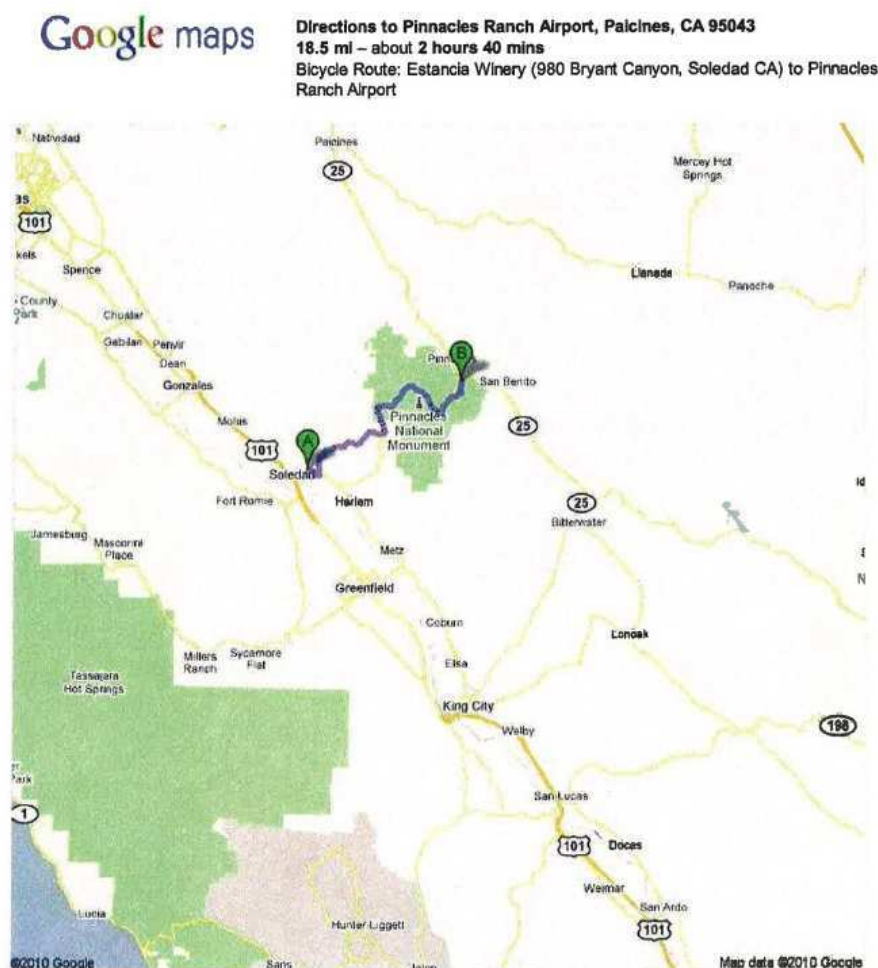
There is also ample evidence confirming that an area near the eastern portion of the Pinnacles National Monument has long been called “Pinnacles Ranch”. *See White Rock NOR Pr. Pub.* at 19-20, 56-57, 62-66, 70, 74 (documents marked WRDOpp20037-38; 20043-47; 20051, 20055). Most of this area was privately owned land acquired by the National Park Service in 2006 and incorporated into the area administered as park land. *See id.* Even after the 2006 acquisition by the National Park Service of most of the historic Pinnacles Ranch area, a small privately-owned Pinnacles Ranch Airport still allows private planes to access the Pinnacles National Monument. *See White Rock NOR Pr. Pub.* at 8-15; 21-27; 32-34 (WRDOpp20001-20007; 20012-20014).

(i) Location of Applicant’s Winery and Vineyards

³ The page numbers correspond to PDF document pages posted on TTABVUE.

According to Applicant's web site for its ESTANCIA wine at <www.estanciaestates.com>, the web page for "Where is Estancia?" states that Applicant's ESTANCIA winery is located at 980 Bryant Canyon Road, Soledad, CA 93960 ("Pinnacles Ranches Address") and that the "1,200-acre Pinnacles Vineyard is situated on a frost-free benchland above Salinas Valley on California's Central Coast, in the Monterey town of Soledad." *See* Mora Dep. Ex. E; *see also* Mora Dep. at 30:11-13 (testifying that "Pinnacles Vineyard" and "Pinnacles Ranches" are used interchangeably to refer to the same place).

Bicycle-route directions available via the widely used Google® Maps web site shows the 18.5 mile distance between the Pinnacles Ranches Address (Point A below) and the Pinnacles Ranch Airport (Point B):



A copy of the map is attached herein as Exhibit A. *See* White Rock NOR Pr. Pub. at 21-22 (documents marked WRDOpp20001-20002).

Although Applicant has cited a MapQuest® driving directions map showing a distance of 52.38 miles, this longer distance is calculated based on the driving distance on major paved roads.⁴ *See* Applicant’s RFA Response No. 2, attached herein as Exhibit B. However, the actual distance “as the crow flies” between the two locations is much less – 18.5 miles by bicycle as clearly shown in the Google® Maps directions above. As can be seen from the above map, the distance from the Pinnacles Ranches Address to the western entrance of the Pinnacles National Monument is clearly much closer even than that.

It should also be noted that, notwithstanding Applicant’s half-hearted complaints about the “reliability” of online information confirming amply the existence of the Pinnacles Ranch Airport, the authoritative Geographic Names Information System (“GNIS”) maintained by the United States Geological Survey in the Department of the Interior (“USGS”) identifies the precise location of the Pinnacles Ranch Airport. A copy of the USGS document identifying the precise location of the Pinnacles Ranch Airport is attached herein as Exhibit C. *See* White Rock NOR Pr. Pub. at 23-24 (WRDOpp20003-20004).

Further, the USGS web site (see image below), as well as multiple other web sites featuring geographic reference information display the location of a “Pinnacles Ranch” and surrounding areas, including but not limited to Pinnacles Wilderness and the Pinnacles Campground. A copy of the USGS National Map Viewer is attached herein as Exhibit D; White Rock NOR Pr. Pub. at 8.

⁴ The protected Pinnacles National Monument essentially bisects the area, as shown in the Google® Maps directions shown above. Major paved roads were understandably not built through the protected park land itself.

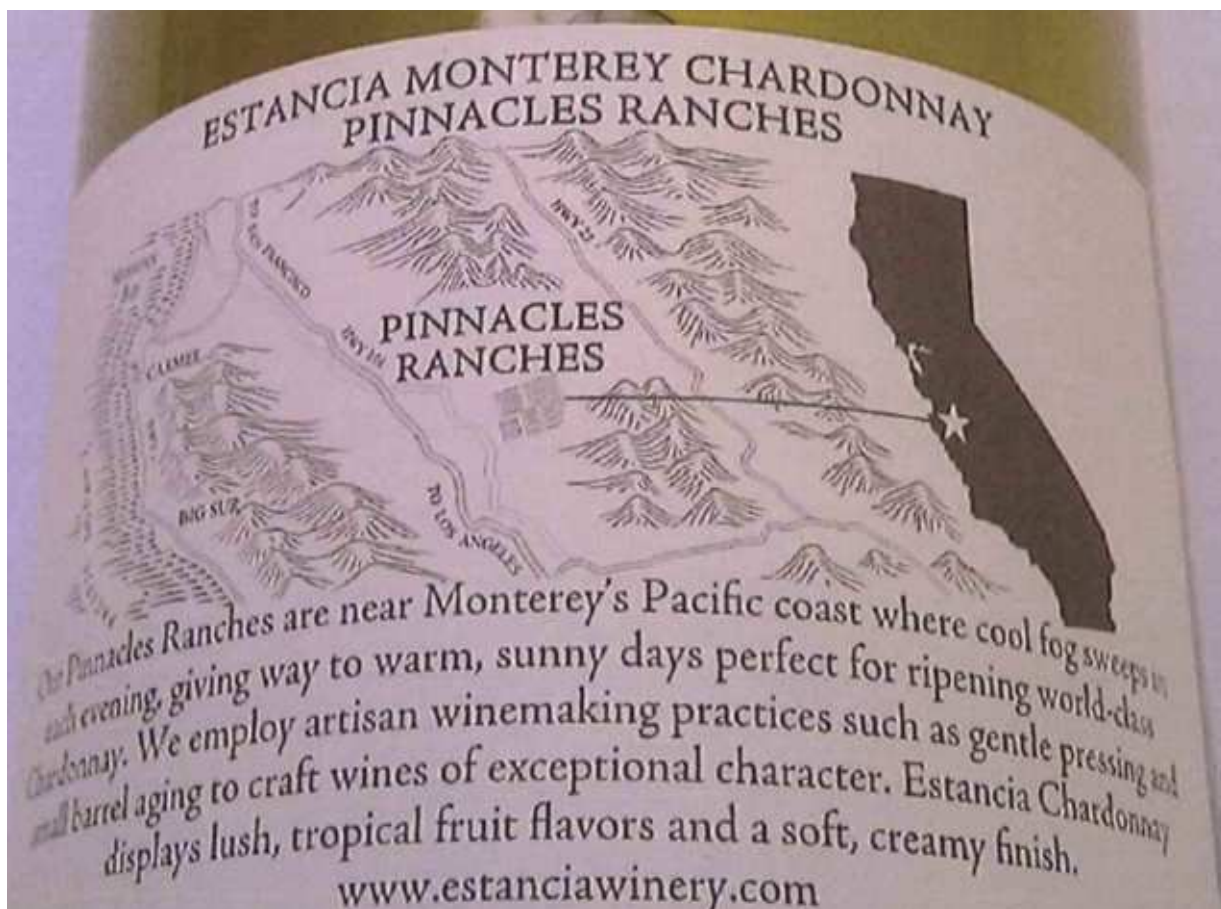


Applicant itself admitted in its response to a Request for Admission that its wines are “bottled and sold from Estancia Estates Winery which is located at 980 Bryant Canyon Road, Soledad, CA 93960” – this address is the same Pinnacles Ranches Address shown on the Google® Map directions shown above. *See Applicant’s RFA Response No. 2, attached herein as Exhibit B.*

The location of Pinnacles Ranches is certainly communicated to purchasers of Applicant’s ESTANCIA-branded chardonnays and pinot noirs. Applicant deliberately and consistently informs the public and the trade about the physical location of Pinnacles Ranches as part of its efforts to create a “sense of place” and an “vineyard-to-bottle story.” Lilienthal Dep. at 88:3-18; Mora Dep. at 20:7-10 (testifying that the “word ‘ranches’ would help to convey . . . a sense of geographic diversity” meaning where the “grapes come from”); Lilienthal Dep. at

67:20-24 (“Pinnacles Ranches” communicates “that there is a Pinnacles ranch, that there is a place where something comes from”).

For example, on the back label of Applicant’s ESTANCIA chardonnay bottles, under the heading “Estancia Monterey Chardonnay Pinnacles Ranches”, there is a map of California as a whole and a detailed topographical map of the Central Coast of California marking the location of the Pinnacles Ranches with a star. According to the detailed map – as shown below – Pinnacles Ranches is located east of the Pacific Ocean, Big Sur and Highway 101 and to the west of Highway 25, which is exactly where the Pinnacles Ranches Address and the town of Soledad are located:



See Guggino Dep. Ex. 3. As shown above, the back label also includes the following language:

“Our Pinnacles Ranches are near Monterey’s Pacific coast where cool fog sweeps in each

evening, giving way to warm, sunny days perfect for ripening world-class Chardonnay.” *See id.*; *see also* Lilienthal Dep. at 50:3-5 (stating that on the back label of the wine bottle, “Pinnacles Ranches” appears “as a locator showing where it is in conjunction to California and there is a illustrated map showing it”); Lilienthal Dep. at 86:7-10 (acknowledging the map on the back label shows the location of Pinnacles Ranches and stated that Pinnacles Ranches are near Monterey’s Pacific Coast); *see* Lilienthal Dep. Ex. X. Further, the Gabilan Mountains, including the Pinnacles formation, form a barrier that traps fog and cooler air from the Pacific Ocean in the Salinas Valley and that blocks them from moving further inland. *See* Reidl Dec. at 6:10-12. The fog and cooler air contribute to the unique growing conditions found in this area. *Id.* at 6:2-13. Such geographic feature of the Salinas Valley of California is consistent with Applicant’s description of Pinnacles Ranches on the back label of Applicant’s ESTANCIA wines.

(ii) “Pinnacles Ranches” is Used in a Purely Informational Manner

Further, the term “Pinnacles Ranches” appears on Applicant’s ESTANCIA-brand wines in an informational manner. For example, the image below depicts the front label of Applicant’s 2008 vintage ESTANCIA brand of chardonnay:



Guggino Dep. Ex. 3. The placement of the term “Pinnacles Ranches” within the context of this type of “label architecture” – *i.e.*, in a subordinate, third or fourth-tier position among several other ancillary terms identifying features of the goods – causes prospective purchasers to view the term “Pinnacles Ranches” as purely informational. The architecture of the label shown above (among others used by Applicant) was examined and explained by White Rock’s expert witness Paul W. Reidl, who was responsible for reviewing and approving for use thousands of wine labels over many years for the large winemaker Gallo. Mr. Reidl opined that, in his view, the messaging intended to be conveyed by Applicant’s labels is that the brand name is ESTANCIA, that the wine originates in the Monterey growing area and is made from pinor noir / chardonnay grapes of the a particular year’s vintage in vineyards known as “Pinnacles Ranches.” *See Reidl Dep. at 28:19-29:11, 38:7-14, 40:6-13.* Therefore, Mr. Reidl opined further that, as used by Applicant, the term “Pinnacles Ranches” merely informs the potential purchaser of an aspect of the goods, namely, communicating that “Pinnacles Ranches” identified the geographic place where the grapes used in Applicant’s wine were grown. *See Reidl Dep. at 34:15-35:22.*

(iii) Applicant’s Communication of the
Geographic Significance of “Pinnacles Ranches”

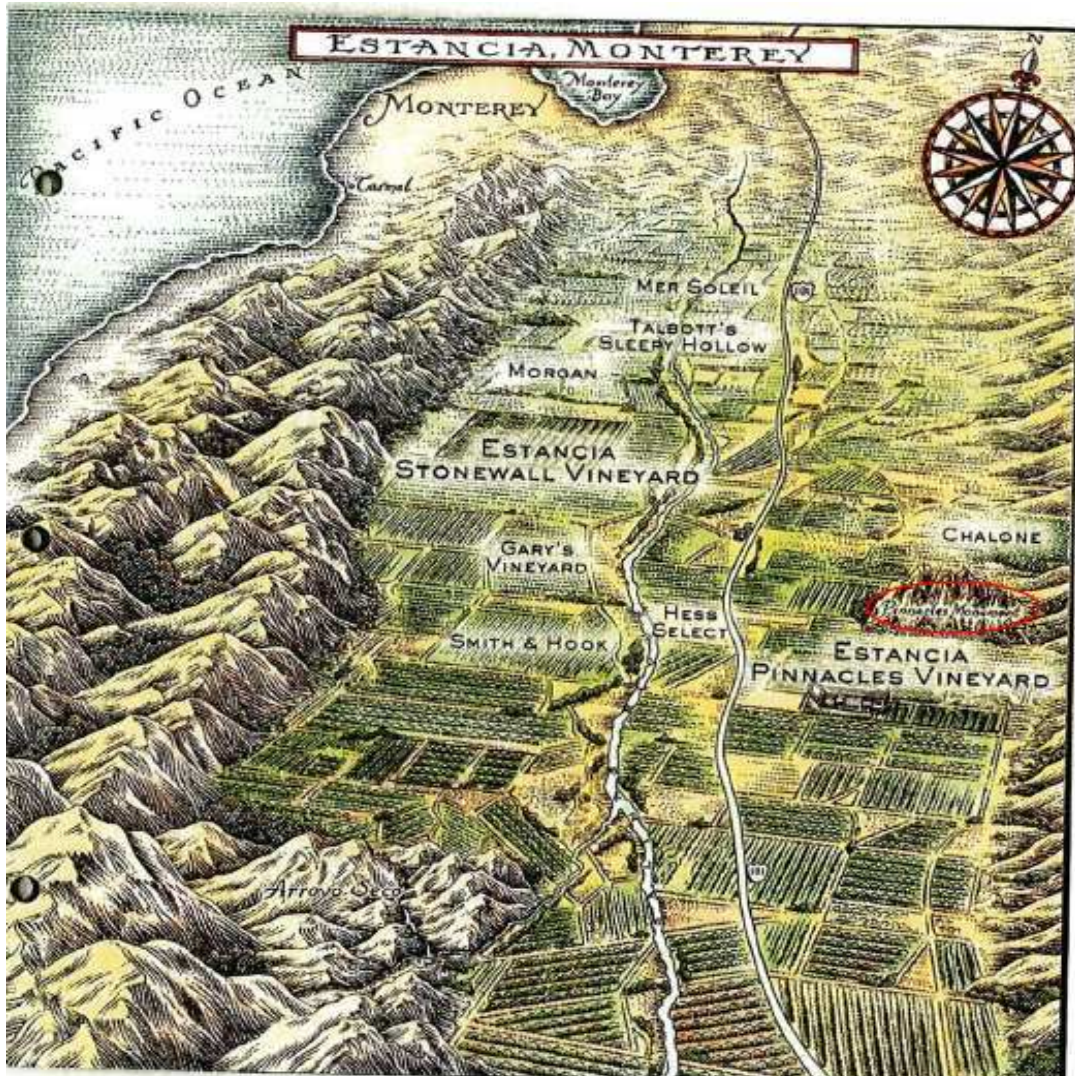
Numerous documents of record detail both the geographic descriptiveness of the term “Pinnacles Ranches” and Applicant’s attempts to communicate the geographical significance of the terms Pinnacles Ranches, Pinnacles Ranch and/or Pinnacles Vineyard⁵ as the location where the grapes for Applicant’s wines are grown, including without limitation the following:

- A third party, Darcie Kent Vineyards, owns a vineyard called “West Pinnacles Vineyard” which is located in “the sunny Soledad valley on the Central Coast” of California, just a few miles away from Applicant’s Pinnacles Ranches. Lilienthal

⁵ *See Mora Dep. at 34:3-7* (stating Applicant uses “Pinnacles”, “Pinnacles Vineyards” and “Pinnacles Ranches” interchangeably).

Dep. Ex. FF. Darcie Kent advertises and sells “West Pinnacles pinot noir” and “West Pinnacles chardonnay.” *Id.*; see also Lilienthal Dep. at 95:25-96:3 (responding that Applicant’s Pinnacles Ranches is located in Soledad Valley on the central coast of California).

- A sell sheet used by Applicant’s sales representatives titled “Estancia, Monterey” and featuring a detailed map displaying several ESTANCIA vineyards including “Pinnacles Vineyard”, the location of which is depicted as being immediately to the south of Pinnacles National Monument with the Pacific Ocean and Highway 101 to the west. Lilienthal Dep. Ex. V; Mora Dep. Ex. H. Applicant included the depiction of “Pinnacles Monument” on the sell sheet map as a point of reference. Lilienthal Dep. at 81:12-23.



[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- The winery where the grapes for Applicant's wine was grown is identified on signage at the winery as "Estancia Pinnacles Vineyard" or "Pinnacles Vineyards." Lilienthal Dep. at 32:6-33:14.

As evidenced by the foregoing, Applicant clearly intended to ensure that its consumers, distributors, and the trade were specifically aware of the geographic location of Pinnacles Ranches and, in turn, the land and the climate where the grapes for Applicant's ESTANCIA wines are grown. Further, Applicant conceded in response to an interrogatory that the word "Ranches" in "Pinnacles Ranches" is "meant to highlight one of [its] own estate vineyard areas." See Applicant's Rog Response No. 7, attached herein as Exhibit E. Accordingly, there can be no doubt that the primary significance of Pinnacles Ranches to the purchasing public is a real location, namely, the location of origin of Applicant's wine, the vineyard in Monterey County.

(2) Purchasers Are Likely to Make a Goods/Place Association, Particularly Since Applicant Itself Encourages Them to Do So

As applied to the instant proceeding, the second prong of the test requires proof that the purchasing public is likely to believe that Applicant's wines originate in a place called Pinnacles Ranches in California. *See In re Save Venice N.Y., Inc.*, 259 F.3d 1346, 1353-54, 59 U.S.P.Q.2d 1778, 1783 (Fed. Cir. 2001) ("Under this prong, we consider whether the public would reasonably identify or associate the goods sold under the mark with the geographic location contained in the mark"). Whether there is an association between the name of the place and the services is determined not in the abstract, but rather in connection with the goods or services with which the mark is used, and from the perspective of the relevant public for those goods or services. *See In re MCO Props. Inc.*, 38 U.S.P.Q.2d 1154, 1156 (T.T.A.B. 1995). Where the goods do in fact emanate from the place named in the mark, the goods/place association can be presumed. *In re Carolina Apparel*, 48 U.S.P.Q.2d 1542, 1543 (T.T.A.B. 1998); *In re JT Tobacconists*, 59 U.S.P.Q.2d at 1082; *In re Chalk's Int'l Airlines Inc.*, 21 U.S.P.Q.2d 1637 (T.T.A.B. 1991) (PARADISE ISLAND AIRLINES held primarily geographically descriptive of the transportation of passengers and goods by air); *In re Cal. Pizza Kitchen Inc.*, 10 U.S.P.Q.2d at 1705.

To establish a goods/place association, it is not necessary to show that the place identified in the mark is well known or noted for the goods. *In re Loew's Theatres, Inc.*, 769 F.2d 764, 767-68, 226 U.S.P.Q. 865, 867-868 (Fed. Cir. 1985) (evidence from gazetteer and dictionary showing that tobacco is a crop produced and marketed in Durango, Mexico held sufficient to establish a *prima facie* goods/place association). Here, there is no question that Applicant explicitly encourages a goods/place association between Applicant's ESTANCIA-branded chardonnays, pinot noirs and sauvignon blanc and their geographic place of origin at Pinnacles Ranches. As discussed above, Applicant regularly communicates to the general public, distributors, and the

trade that its ESTANCIA-branded chardonnays, pinot noirs and sauvignon blanc are produced at the Pinnacles Ranches. Several of Applicant's current and former employees (in notable agreement with testimony given by White Rock's expert witness Paul Reidl) have testified about the importance of land and the climate in which the grapes were grown in the marketing of the ESTANCIA wines as defined in part by their geography – that grapes from certain areas taste differently from others. *See e.g.*, Mora Dep. at 28:10-12 (“[W]ines are in part made or the flavor is in part defined by geography. So giving a notion to consumers of where that geography exists can be helpful”). Applicant's wine labels feature large map images showing the location of Pinnacles Ranches and Applicant trains its sales force to point out the geographic location of Pinnacles Ranches in order to communicate a “sense of place” impacting the grapes grown there and the resulting flavor of the wines. *See* Lilienthal Dep. at 76:4-6 (explaining that “sense of place” means that the ranch name, *i.e.*, Pinnacles Ranches,” shows where the grapes for Applicant's wine are grown).

(i) Federal Regulations Require that the Word “Ranch”
on Wine Identify a Geographic Source of the Grapes

In addition, federal wine labeling regulations require that the term “ranch” used on a wine label must describe accurately the place of origin of the wine. The Alcohol and Tobacco Tax and Trade Bureau (TTB) under the Department of the Treasury sets forth its currently effective regulations in Title 27, Chapter I, of the Code of Federal Regulations (27 C.F.R.) and regulations concerning labeling requirements for wine are specifically codified in Part 4, Subpart D. *See* 27 C.F.R. § 4.30-4.39. The wine labeling regulations currently permit wine makers to include the name of the vineyard, orchard, farm or ranch on the label provided 95% of the wine in the bottle was produced from “primary winemaking material grown on the named vineyard, orchard, farm or ranch.” *See* 27 C.F.R. §4.39; White Rock Rebuttal NOR Pr. Pub. No. 1.

As the term “ranches” is included as part of Pinnacle Ranches on Applicant’s ESTANCIA wine labels, in order to comply with the current wine regulations, 95% of the primary winemaking material for those ESTANCIA wines must have been grown at the Pinnacles Ranches. *See* Guggino Dep. at 36:1-10 (stating that the term “ranch” is a geographic designation and the term “ranches” is a property or a place); Price Dep. at 19:19-20:10 (Applicant’s Vice President of regulatory affairs and witness knowledgeable about compliance with TTB regulations related to wine labels acknowledged that “Pinnacles Ranches would describe where the grapes are coming from”). Otherwise, Applicant would be in violation of federal wine labeling regulations for misleading consumers.

(ii) The Evidence of Record Overwhelmingly Demonstrates that the Term “Pinnacles Ranches” is Primarily Geographically Descriptive

The record in this case is filled with evidence from multiple sources demonstrating Applicant’s use of the term “Pinnacles Ranches” as a geographic term. In stark contrast, aside from intermittent (and obviously-coached) speeches and buzzwords offered by Applicant’s current and former employees, the record is devoid of any objective evidence of business activities associated with trademark usage of the term “Pinnacles Ranches.” In evaluating Applicant’s use of the term “Pinnacles Ranches” from a wine industry perspective, White Rock’s expert witness noted in his expert report the same type of striking absence of industry activity normally associated with trademark usage for wines:⁶

Based on the foregoing, it is my opinion that Franciscan has not in its usage of the term PINNACLES RANCHES attempted to

⁶ During his testimony deposition, Mr. Reidl also noted the geographic nature of the term “Pinnacles Ranches” and the treatment by Applicant as such: “[A]nd when you look at the marketing materials, some of which we’ve looked at today, you look at the back labels, you see that people who put together the labels seem to have made a conscious decision to emphasize the geographic nature of the term by talking about the vineyards, by talking about the location of the vineyards, by having a map indicate the location of the vineyards. All of which seem, in my view, to reflect that they are treating this as a geographic term and not attempting to develop trademark significance for it. And even if they had inadvertently been developing trademark significance, none of the traditional indicia for that are present.” Reidl Dep. at 83:7-84:2.

develop trademark significance for it. The term has been used on labels as a vineyard designation for ESTANCIA wines, and the marketing concept has been to associate it with “The Pinnacles” as a portion of the Gabilan Mountain range that is responsible for keeping the fog and cool air from the Pacific Ocean in the Salinas Valley which, in turn, creates a unique growing condition for the grapes grown on the “Pinnacles Ranches” located nearby. As such, it is reasonable to expect that consumers will take away from the three labels on which the term is used (Chardonnay, Pinot Noir, Sauvignon Blanc) the message that the brand is ESTANCIA and the grapes are grown on the Pinnacles Ranches and vineyard which are contiguous to and named after The Pinnacles National Monument. I have no doubt based on what I have observed and on my experience that this is the message Franciscan intends to communicate to consumers.

Reidl Dec. ¶ 35, at 16-17.

Based on the foregoing, as each required element for geographic descriptiveness has clearly been met in this case, the inevitable conclusion is that the term “Pinnacles Ranches” is primarily geographically descriptive and as such, registration of this term should be refused.

B. The Term “Pinnacles Ranches” Cannot Be Registered Because It Fails to Function as a Mark Under 15 U.S.C. §§1051-1052, 1127

Pursuant to 15 U.S.C. §§1051-1052, 1127, the term “Pinnacles Ranches,” as used by Applicant, does not function as a trademark to identify and distinguish Applicant’s goods. *See* 15 U.S.C. §§1051-1052, 1127; *see also In re Bose Corporation, d/b/a Interaudio Systems*, 546 F.2d 893, 896, 192 U.S.P.Q. 213, 215 (C.C.P.A. 1978) (“Before there can be registration, there must be a trademark”). As evident from numerous documents of record and the testimony of virtually every witness (including Applicant’s own witnesses), Applicant does not use the term “Pinnacles Ranches” in a manner likely to be perceived by consumers as having any trademark significance. Instead, the term is used in an ancillary non-trademark manner that merely provides information regarding the geographic origin of Applicant’s goods.

The critical question in determining whether matter sought to be registered is a trademark is whether the asserted mark would be perceived as identifying a single source for the goods. *See In re Brass-Craft Mfg. Co.*, 49 U.S.P.Q.2d 1849 (T.T.A.B. 1998); *In re Volvo Cars of North America Inc.*, 46 U.S.P.Q.2d 1455 (T.T.A.B. 1998). The mere fact that a designation appears on the specimens of record does not make it a trademark. *In re Safariland Hunting Corp.*, 24 U.S.P.Q.2d 1380 (T.T.A.B. 1992).

As discussed above, the placement of the term “Pinnacles Ranches” and the context of its use – among several other terms describing features of the goods – prospective purchasers would view this word as part of the text listing the features of the product. In examining the architecture of the labels shown above, the messaging intended to be conveyed by the labels is that the brand name is ESTANCIA, that the wine originates in the Monterey growing area and is made from pinor noir / chardonnay/ sauvignon blanc grapes of the 2002 / 2008 vintage in vineyards known as “Pinnacles Ranches.” *See Reidl Dep.* at 28:19-29:11, 38:7-14, 40:6-13. As used by Applicant, and as likely perceived by purchasers and prospective purchasers, the term “Pinnacles Ranches” merely informs the potential purchaser of an aspect of the goods, namely, communicating that “Pinnacles Ranches” were the ranches on which the grapes used in Applicant’s wine were grown. *See Reidl Dep.* at 34:15-35:22. As noted above, there is nothing in the record that contravenes the facts that the term “Pinnacles Ranches” describes the geographic area in which Applicant’s winery and vineyards are located.

Further, Applicant’s current and former employees have uniformly testified that the term “Pinnacles Ranches” is a “sub-brand” subordinate to the ESTANCIA brand. This testimony and the documents of record collectively confirm the reality that “Pinnacles Ranches” functions in an informational manner rather than as a trademark. Applicant’s witness Deborah Price, who has

responsibility for wine labeling for Applicant and many of its corporate affiliates, testified as follows regarding her understanding of the significance of the terms “ranch,” “vineyard,” “orchard,” and “farm” as used on wine labels: **“it’s a sub – another way to describe where the grapes are coming from, another way of further subdividing, identifying a brand . . . Pinnacles Ranches would describe where the grapes are coming from.”** Price Dep. at 20:4-6, 9-10 (emphasis added). The mere intent that a term function as a trademark is not enough in and of itself, any more than attachment of the trademark symbol would be, to make a term a trademark. *In re Manco Inc.*, 24 U.S.P.Q.2d 1938 (T.T.A.B. 1992) (THINK GREEN failed to function as a mark for, inter alia, mailing and shipping cardboard boxes); *see also In re Volvo*, 46 U.S.P.Q.2d 1455 (DRIVE SAFELY failed to function as a mark for automobiles and structural parts therefor); *In re Remington Products, Inc.*, 3 U.S.P.Q.2d 1714 (T.T.A.B. 1987) (PROUDLY MADE IN THE USA failed to function as a mark for electric shavers and parts thereof).

In view of the foregoing and based on the record in the instant proceeding, the manner in which “Pinnacles Ranches” is being used does not support a finding that potential consumers would perceive it as a trademark. As used by Applicant, the term “Pinnacles Ranches” is informational in nature. Accordingly, the term “Pinnacles Ranches” should be refused registration pursuant to Sections 1, 2, and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052 and 1127, on the grounds that the term fails to function as a trademark.

V. CONCLUSION

For the reasons set forth above, White Rock respectfully requests that the Board sustain the Opposition and refuse registration of Application Serial No. 77/598,674.

Respectfully submitted,

Dated: June 17, 2011

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CERTIFICATE OF SERVICE

Date: June 17, 2011

The undersigned hereby certifies that a true and correct copy of the foregoing Main Trial Brief For Opposer, White Rock Distilleries, Inc. has been served by first class mail, postage prepaid, this 17th day of June 2011 upon Franciscan Vineyards, Inc. at the following correspondence address of its counsel of record:

John M. Rannells, Esq.
Baker & Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869

/DANIEL I. SCHLOSS/
Daniel I. Schloss

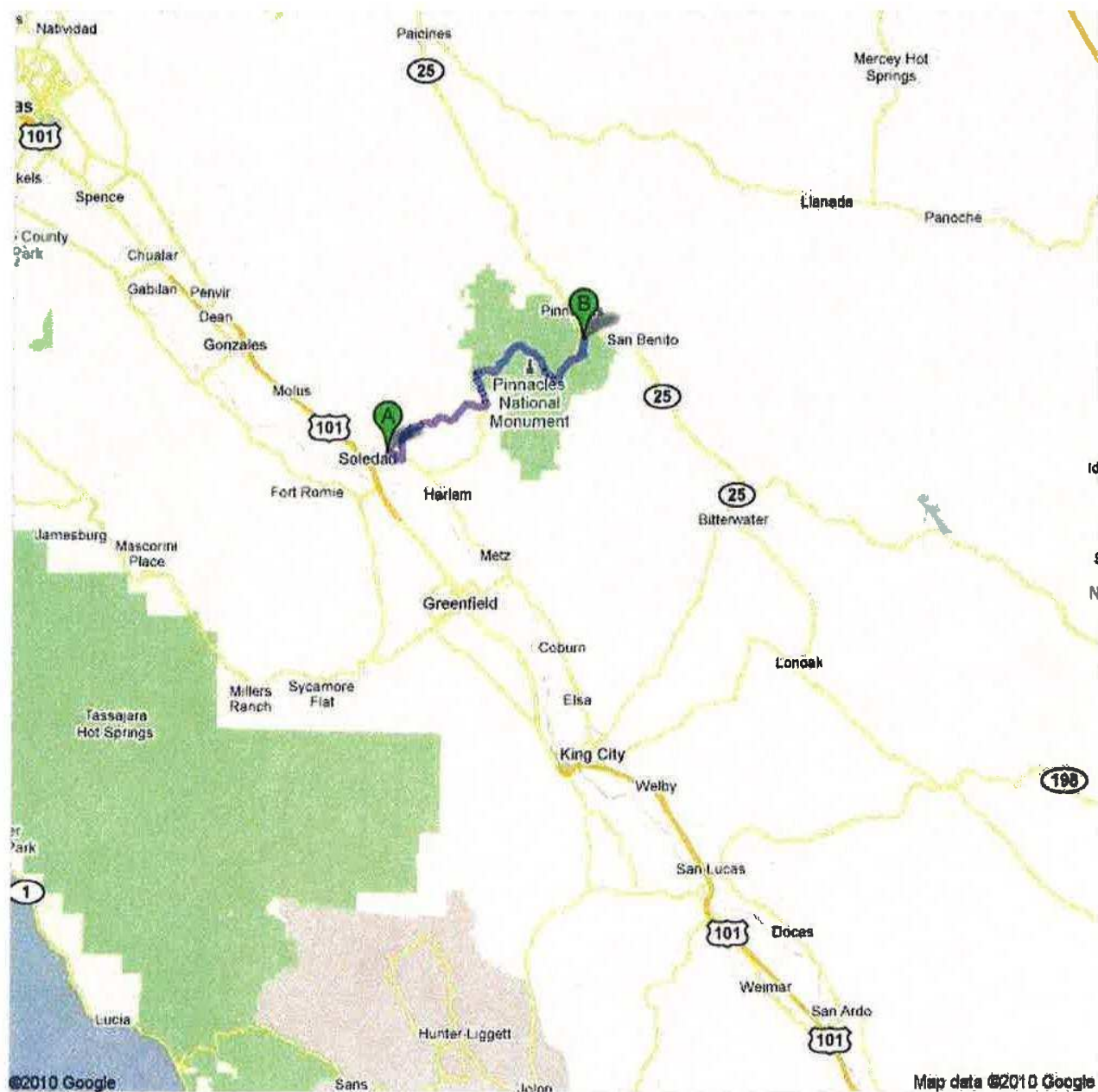
EXHIBIT A













Directions to Pinnacles Ranch Airport, Paicines, CA 95043

18.5 mi – about 2 hours 40 mins

Bicycle Route: Estancia Winery (980 Bryant Canyon, Soledad CA) to Pinnacles Ranch Airport



 **Estancia Winery**
980 Bryant Canyon, Soledad, CA 93960-2830 - (831) 678-0214

- | | | |
|---|---|----------------------------|
| | 1. Head east on Bryant Canyon Rd toward CA-146 E/Metz Rd
About 3 mins | go 0.7 mi
total 0.7 mi |
|  | 2. Turn left at CA-146 E/Metz Rd
About 3 mins | go 0.3 mi
total 1.0 mi |
|  | 3. Turn left at Stonewall Canyon Rd
About 7 mins | go 1.1 mi
total 2.1 mi |
|  | 4. Turn right to stay on Stonewall Canyon Rd
About 55 mins | go 4.4 mi
total 6.5 mi |
|  | 5. Slight right toward Stonewall Canyon Rd
About 7 mins | go 0.8 mi
total 7.3 mi |
| | 6. Continue straight onto Stonewall Canyon Rd
About 2 mins | go 0.4 mi
total 7.7 mi |
|  | 7. Turn left at CA-146 W
About 21 mins | go 1.9 mi
total 9.6 mi |
|  | 8. Turn right to stay on CA-146 W
About 11 mins | go 1.5 mi
total 11.2 mi |
| | 9. Continue onto Balconies Trail
About 5 mins | go 0.7 mi
total 11.8 mi |
| | 10. Continue onto Balconies Caves Trail
About 5 mins | go 0.4 mi
total 12.2 mi |
| | 11. Continue onto Old Pinnacles Trail
About 15 mins | go 1.9 mi
total 14.2 mi |
|  | 12. Continue onto CA-146 E
About 16 mins | go 2.8 mi
total 17.0 mi |
|  | 13. Turn right
About 5 mins | go 0.6 mi
total 17.6 mi |
|  | 14. Sharp left
About 5 mins | go 0.8 mi
total 18.4 mi |
|  | 15. Turn left
About 1 min | go 0.2 mi
total 18.5 mi |

 **Pinnacles Ranch Airport, Paicines, CA 95043**

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2010 Google

Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.

EXHIBIT B

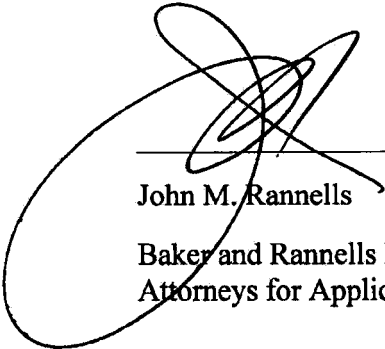
Instructions and Definitions shall be deemed incorporated into each Request.” Franciscan responds as follows: All objections, general or specific, set forth in Franciscan’s Response and Objections to Applicant’s First Set of Interrogatories and First Set of Request for Productions of Documents to Opposer are and shall be deemed incorporated herein in their entirety. The full text of Franciscan’s objections shall be deemed incorporated into the response to each Request below.

Request for Admission No.1: Admit that the location of origin of the wines sold under Applicant’s Mark is at or within a few miles of a geographic location called “Pinnacles Ranch”.

Response: The request is objected to as being vague, imprecise and ambiguous insofar as use of the term “few” is concerned. The request is also objected to as being vague, imprecise and ambiguous insofar as use of the term “Pinnacles Ranch” is concerned. In the event that Opposer is referring to the mention of “PINNACLES RANCHES” as shown on the back bottle label of Applicant’s “Pinnacles Ranches” wines, the same identifies the name of one of Applicant’s own vineyards. Insofar as Opposer is referring to some other alleged geographic location in existence, Applicant will respond upon Opposer identifying the actual alleged “geographic location.”

Request for Admission No. 2: Admit that the location of origin of the wines sold under Applicant’s Mark is within a few miles of the Pinnacles National Monument.

Response: The request is objected to as being vague, imprecise and ambiguous insofar as use of the term “few” is concerned. The request is also objected to as being vague, imprecise and ambiguous insofar as use of the phrase “origin of the wines sold under Applicant’s Mark” is concerned. The referenced wines are bottled and sold from Estancia Estates Winery which is located at 980 Bryant Canyon Road, Soledad, CA 93960. According to driving directions readily available from and obtained from *Mapquest.com*: the trip from Estancia Estates Winery to “Pinnacles National Monument”, results in an estimated trip of 1 hour and 5 minutes, at a distance of 52.38 miles. Based upon the foregoing and Applicant’s understanding of the term “few”, the Request is denied.



John M. Rannells

Baker and Rannells PA
Attorneys for Applicant

EXHIBIT C



Geographic Names Information System (GNIS)



Stop! Do not bookmark or copy/paste this URL before reading [FAQs](#).

 Query

 Result

 FAQs

Feature Query Results

[Click the feature name for details and to access map services](#)
Click any column name to sort the list ascending ▲ or descending ▼

Feature Name	ID	Class	County	State ▲	Latitude	Longitude	Elev(ft)*	Map**	BGN	Entry Date
Pinnacles Ranch Airport	1653795	Airport	San Benito	CA	363036N	1210810W	1161	Bickmore Canyon	-	01-MAR-94

1 - 1

[View & Print all](#) [Save as pipe "|" delimited file](#)

Note: If data are returned and the column headings display but no data appear, click any column heading.
***Elevations are from the [National Elevation Dataset](#)**
****The map name is not necessarily the name of the community containing the feature. See [FAQs](#) for details.**

[U.S. Department of the Interior](#) || [U.S. Geological Survey](#)
12201 Sunrise Valley Drive, Reston, VA 20192, USA
gnis_manager@usgs.gov
Form updated: March 24, 2010
[USGS Privacy Policy and Disclaimers](#)



Geographic Names Information System (GNIS)

Stop! Do not bookmark or copy/paste this URL before reading [FAQs](#).
[Query](#) [Result](#) [FAQs](#)

Feature Detail Report for: Pinnacles Ranch Airport

ID: **1653795**Name: **Pinnacles Ranch Airport**Class: **Airport** ([Definitions](#))Description: **Facility is located 23 mi NW from Paicines**

Citation: **Federal Aviation Administration (FAA) listing of airports and other landing areas in the United States with associated information, 1981. Now available in CD format published quarterly. The year and month of the CD follows if known: 940309**

Entry Date: **01-Mar-1994***Elevation: **1161/354***Elevations in feet/meters from the [National Elevation Dataset](#)

Counties

Sequence	County	Code	State	Code	Country
1	San Benito	069	California	06	US

Coordinates (One point per USGS topographic map containing the feature, NAD83)

Sequence	Latitude(DEC)	Longitude(DEC)	Latitude(DMS)	Longitude(DMS)	Map Name
1	36.5099639	-121.1360304	363036N	1210810W	Bickmore Canyon

Designations

Designation

Administered Private

U.S. Department of the Interior || U.S. Geological Survey
 12201 Sunrise Valley Drive, Reston, VA 20192, USA
gnis_manager@usgs.gov
 Form updated: March 24, 2010
[USGS Privacy Policy and Disclaimers](#)

Mapping Services


Click the link to display the feature in U.S. mapping services.

[GNIS in Google Map](#)
[HomeTownLocator](#)
[ACME Mapper 2.0](#)
[USGS The National Map](#)
[Microsoft Virtual Earth](#)
[TerraFly.com](#)
[TerraServer DOQ](#)
[TerraServer DRG](#)
[Find the Watershed](#)
[MapQuest](#)
[Yahoo! Local Maps](#)
[Expedia](#)


Important Links

[GNIS Home](#)
[U.S. Board on Geographic Names](#)
[Mapping Information](#)

EXHIBIT D



science for a changing world



The National Map
Viewer

Maintenance Alert: The viewer will be briefly unavailable 2/1/11 at 5PM MST.

Find a Place

Chalone
Annes
Campground

Chalone
Creek
Campground

Pinnacles
Campground

Pinnacles
Wilderness

Chaparral
Campground

Chaparral
Overlook

Dead Tree
Spring

W. Flow
Spring

Pinnacles

25

Bear
Valley
Ranch

PINNACLES
RANCH

Map

Scale

SAN DEN
Accessibility | FOI

EXHIBIT E

Interrogatory No. 7: Describe the facts and circumstances pertaining to Applicant's decision to apply for registration of the mark PINNACLES RANCHES, Serial No. 77/598,674, in the United States Patent and Trademark Office.

Response: The mark is considered a natural extension and/or expansion and/or variant of the PINNACLES mark. The term "ranches" in the mark is meant to highlight one of Opposer's own estate vineyard areas. The term "ranches" is disclaimed in Opposer's application.